

CALIFORNIA HOUSING FINANCE AGENCY

PROMISSORY NOTE
Construction and Permanent Loan
CalHFA Development No. [loan no.]
[TE-Fixed]

\$ _____

Sacramento, California
_____, 200__

FOR VALUE RECEIVED, the undersigned, [borrower], a California limited partnership, with its principal office at c/o _____ (the “**Borrower**”), hereby promises to pay to the order of California Housing Finance Agency, P.O. Box 4034, Sacramento, California 95812-4034 (the “**Agency**”) or holder hereof (“**Holder**”), a principal amount equal to _____ Million _____ Hundred _____ Thousand and No/100 Dollars (\$[amount]), or so much of that amount that the Agency shall have advanced to or for the benefit of the Borrower. The obligation of the Borrower is subject to the terms of all the Loan Documents as such term is defined in that certain document entitled “California Housing Finance Agency, Regulatory Agreement, CalHFA Development No. [loan no.]” executed among the Borrower and the Agency and imposed upon the Development as defined below (the “**Regulatory Agreement**”), including the Construction and Term Loan Agreement dated on or about the date of this Note between the Borrower and the Agency. Capitalized terms used below and not otherwise defined have the meanings given to them in the Construction and Term Loan Agreement. The Borrower also promises to pay to the order of the Holder interest at the rates, in the amounts and at the times hereinafter provided. All sums owing hereunder are payable in lawful money of the United States of America, in immediately available funds.

1. **Borrower’s Obligation.** This Note evidences the obligation of the Borrower to the Agency for the repayment of funds loaned to the Borrower by the Agency to provide construction financing and, if certain conditions are met, permanent financing of improvements for a multifamily rental housing development (the “**Development**”) on the real property described in the Loan Documents.

2. **Maturity.** Unless extended in accordance with the Construction and Term Loan Agreement or converted in part to longer-term financing as provided in Section 5, the outstanding principal balance of this Note, together with all accrued and unpaid interest, shall be due and payable in full on _____, 200__ (the “**Maturity Date**”).

3. **Interest Rate During Initial Term.** Except as provided in Section 4, while the Construction Loan (as defined in Section 4, below) is outstanding, interest shall accrue on funds advanced by the Agency at a fixed interest rate equal to _____% per annum (the “**Initial Interest Rate**”). Interest calculations shall be based on a 365-day year and actual days elapsed. Interest accrued on this Note shall be due and payable on the first day of each month commencing with the first month after the date of this Note.

The Agency in its sole discretion may adjust the amount of interest charged hereunder by reducing such amount so as to preserve the tax-exempt status of interest on any debt obligations of the Agency.

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4. Interest Rate During Discretionary Extension Period. If the term of the Construction Loan is extended in accordance with the Construction and Term Loan Agreement beyond the Maturity Date (a “**Discretionary Extension Period**”), the interest rate on this Note from time to time during the Discretionary Extension Period will be either a fixed rate or an adjustable rate determined under this Section 4 and adjusted on each Reset Date (as defined below) occurring on the first day of the month in which the Discretionary Extension Period commences and thereafter as determined in accordance with this Section 4. The Discretionary Extension Period shall commence on the Maturity Date. During any portion of a Discretionary Extension Period when the outstanding principal balance of the Note is less than or equal to the amount of the Permanent Loan (or the sum of such amounts if this Note provides for more than one Permanent Loan), the interest rate on this Note shall be equal to the fixed interest rate set forth below for the Permanent Loan (or the weighted average of such rates and/or if this Note provides for more than one Permanent Loan). During any portion of a Discretionary Extension Period when the outstanding principal balance of the Note is greater than the amount of the Permanent Loan (or the sum of such amounts if this Note provides for more than one Permanent Loan), the interest rate as of each Reset Date during that portion of the Discretionary Extension Period will be adjusted to be a percentage equal to a fraction (the “**Weighted Average Rate Formula**”):

- (i) the numerator of which is the sum of:
 - (a) the balance, including principal and unpaid interest, of the Construction Loan as of such Reset Date, less the amount of the Permanent Loan (or the sum of such amounts if this Note provides for more than one Permanent Loan), with the difference multiplied by the Reset Rate (as defined below) as of such Reset Date;
 - and
 - (b) the amount of the Permanent Loan multiplied by the interest rate on the Permanent Loan (or the sum of such multiples if this Note provides for more than one Permanent Loan); and
- (ii) the denominator of which is the balance, including principal and accrued unpaid interest, of the Construction Loan as of such Reset Date;

The initial interest rate and subsequent interest rates for the Discretionary Extension Period shall be established without regard to any limitations.

“Construction Loan” means the construction loan represented by this Note; it excludes any loan represented by a separate promissory note dated on or about the date of this Note.

“Index Rate” means one-month LIBOR as of the third business day preceding the Reset Date, as determined by the Agency in accordance with its usual practices and procedures.

“LIBOR” means the applicable London Interbank Offered Rate as determined by the Agency in accordance with its usual practices and procedures

“Permanent Loan” means the Permanent Loan or Permanent Loans described in the following section of this Note; it excludes (x) any Bridge Loan described in the following section and (y)

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any long term loan represented by a separate promissory note dated on or about the date of this Note.

“Reset Date” means the first calendar day of each month. The first Reset Date of the Discretionary Extension Period is the Maturity Date.

“Reset Rate” means the Index Rate plus the Spread.

“Spread” means one hundred (100) basis points.

Borrower’s right, if any, to one or more Discretionary Extension Periods and fees payable as a condition to the granting of any Discretionary Extension Period shall be determined under the terms of the Construction and Term Loan Agreement.

5. [Not applicable to Risk Share loans, which require a separate Note for the Permanent Loan] Permanent Loan. Upon the Agency’s written acknowledgment of satisfaction of all conditions in the Construction and Term Loan Agreement to conversion of Borrower’s Construction Loan to one or more Permanent Loans ~~[Delete if not applicable: and a Bridge Loan]~~, including without limitation reduction of the outstanding principal balance to \$_____, the following interest and payment terms shall become applicable:

(a) Permanent Loan A – 30 Years.

(i) Commencing on the day determined by the Agency to be the date of conversion to a Permanent Loan, interest shall accrue on \$_____ of the outstanding principal balance (“**Permanent Loan A**”) at a fixed rate of _____ and _____ tenths percent (_____%) per annum.

(ii) On the date of conversion, if not the last day of the calendar month, Borrower shall pay, in advance, all interest to accrue on Permanent Loan A of this Note from and including the day of conversion, through and including the last day of that month.

(iii) On the first day of the second full month following the date of conversion, and on the first day of each month thereafter, Borrower will make payments of principal, interest and required impounds with respect to Permanent Loan A until payment in full of all amounts due under Permanent Loan A. Such payments shall be based on a thirty (30) year level, fully amortized basis.

(iv) All amounts due with respect to the Permanent Loan A are due and payable on the first day of the three hundred sixty-first (361st) full calendar month following the date of conversion.

(v) The Borrower covenants not to pay the indebtedness evidenced by this Note and described as Permanent Loan A, or any part thereof, prior to or in advance of the time or times for payment thereof as provided herein. If this Permanent Loan is funded under the Agency’s Tax Credit 30/15 Program (as will be indicated in the Regulatory Agreement), and so long as federal tax law permits, Borrower may prepay the Permanent Loan in full upon or after the fifteenth (15th) anniversary of the date of conversion to Permanent Loan, after giving Agency a one hundred twenty (120) day prior written notice.

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(b) Permanent Loan B ~~[Delete if not applicable: Bridge Loan]~~— Years.

(i) Commencing on the day determined by the Agency to be the date of conversion to a permanent loan, interest shall accrue on the next \$_____ of the outstanding principal balance in excess of Permanent Loan A (“**Permanent Loan B**”) at a fixed rate of _____ and _____ tenths percent (____%) per annum.

(ii) On the date of conversion, if not the last day of the calendar month, Borrower shall pay, in advance, all interest to accrue on Permanent Loan B of this Note from and including the day of conversion, through and including the last day of that month.

(iii) On the first day of the second full month following the date of conversion, and on the first day of each month thereafter, Borrower will make payments of principal and interest with respect to Permanent Loan B until payment in full of all amounts due under Permanent Loan B. Such payments shall be based on a ten (10) year level, fully amortized basis.

(iv) All amounts due with respect to the Permanent Loan B are due and payable on the first day of the one hundred twenty-first (121st) full calendar month following the date of conversion.

(v) The Borrower covenants not to pay the indebtedness evidenced by this Note and described as Permanent Loan B, or any part thereof, prior to or in advance of the time or times for payment thereof as provided herein. **[VERIFY WITH LOAN OFFICER]**

(c) Replacement Notes. For the convenience of the parties, at Agency’s request Borrower shall execute replacement Promissory Notes representing each of Permanent Loan A and Permanent Loan B reflecting the terms set forth above and elsewhere in this Note with respect to the Permanent Loan. Execution of such replacement Promissory Notes is not intended as a modification of the Borrower’s obligation and will be handled without a formal escrow unless Agency determines that a formal escrow is necessary or desirable for preserving or confirming Agency’s title insurance. A replacement Promissory Note shall be effective only upon surrender of this Note marked “cancelled.”

6. Security. This Note is secured by, among other things, that certain Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) of even date herewith executed by Borrower as _____ [and _____ as fee owner] of the subject real property, as trustor[s], to a trustee for the benefit of Agency.

7. Late Charge. The Borrower agrees that it would be impracticable or extremely difficult to fix the actual damage to the Holder in the event the Borrower shall be late in the making of any payment due hereunder. Therefore, in the event the Borrower shall fail to make any such payment within ten (10) days after the due date thereof, the Holder hereof, at its option and in addition to any other remedy hereunder, may impose upon the Borrower, and the Borrower shall pay, a “late charge” of two percent (2%) of the amount of such delinquent payment.

8. Place and Manner of Payment. All amounts due and payable under this Note and the Loan Documents are payable at the principal office of the Agency set forth above, or at such other place

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or places as the Holder hereof may designate to the Borrower in writing from time to time. In order to assure timely payment to Agency of accrued interest, principal, fees and late charges due and owing under the loan evidenced by this Note, Borrower hereby irrevocably authorizes Agency to directly debit Borrower's funds deposited with Agency, if any, or funds available for disbursement on account of accrued interest under the Construction and Term Loan Agreement for payment when due of all such amounts payable to Agency. Borrower represents and warrants to Agency that Borrower is the legal owner of said funds. Written confirmation of the amount and purpose of any such debit shall be given to Borrower by Agency not less frequently than monthly.

9. Application of Payments. All payments received on account of this Note shall be first applied to accrued interest and the remainder shall be applied to the reduction of principal, except that if the Holder hereof shall have made additional advances under the terms of the Loan Documents and such advances shall not have been repaid, any moneys received by the Holder pursuant to the provisions hereof, at the option of the Holder, may be applied first to the repayment of such advances and interest thereon and the balance, if any, shall be applied as aforesaid.

10. Application of Overpayments. If at any time the Borrower shall have paid interest hereunder in an amount greater than the amount then due, such excess amount, at the option of the Holder, may be deposited by the Holder in a reserve fund for the Development established by the Holder or credited on the payment next due hereunder.

11. Borrower's Waivers. The Borrower and every guarantor of this Note, or of the obligation represented by this Note, hereby waives: (a) notice of default or delinquency; (b) notice of acceleration; (c) notice of non-payment; (d) notice of costs, expenses and losses and interest thereon; (e) notice of interest on interest and late charges; (f) diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and interests in and to properties securing payment of this Note; (g) presentment for payment, demand, protest, and notices of dishonor and of protest; (h) the benefits of all waivable exemptions; and (i) all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

12. Default Under Other Loan Documents and Acceleration. All covenants, conditions and agreements contained in the Deed of Trust, Regulatory Agreement, and the other Loan Documents are hereby made a part of this Note. The Borrower agrees that the unpaid balance of the then principal amount of this Note, together with all accrued interest thereon and charges owing, shall, at the option of the Holder or, if so provided in any Loan Document executed by the Borrower, shall automatically, become immediately due and payable, and thereafter until paid bear interest at the rate of ten percent (10%) per annum or, if lesser, at the maximum rate permitted by law upon the failure of the Borrower to make any payment hereunder as and when due; upon the failure of the Borrower to perform or observe any other term or provision of this Note after lapse of any expressly applicable cure period, or upon the occurrence of any event (whether termed default, event of default or similar term) which under the terms of the Deed of Trust, Regulatory Agreement, or of the other Loan Documents shall entitle the Holder or the Agency to exercise rights or remedies thereunder, after any notice and cure period if provided for in the Deed of Trust.

13. Attorneys' Fees. In any nonjudicial foreclosure process or other action to enforce or relating to any provision of the Loan Documents, the prevailing party shall be entitled to recover from the other party, its costs and expenses including attorney's fees. The term "costs and expenses" as used herein shall include all costs and expenses actually and reasonably incurred including but not limited to attorney's fees and cost of suit; filing, motion, and jury fees; juror food and lodging; taping, videotaping,

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and transcribing depositions and travel expenses to attend depositions; service of process by a public officer, registered process server, or other means; expenses of attachment including keeper's fees; premiums on surety bonds; ordinary witness fees pursuant to Section 68093 of the Government Code; fees of expert witnesses whether or not ordered by the court; transcripts of court proceedings whether or not ordered by the court; court reporters fees as established by statute; investigation expenses in preparing the case for trial; postage telephone, and photocopying charges; costs in investigation of jurors or in preparation for voir dire; models, blowups and photocopies of exhibits, and any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal. Such costs and expenses shall be recoverable whether the services were rendered by a salaried employee of the party or by an independent contractor. In addition, Borrower agrees to pay reasonable costs, expenses, and attorneys fees paid or incurred in connection with representing Agency or Holder in any bankruptcy, reorganization, receivership or other proceedings affecting creditors rights and involving a claim under the Loan Documents.

14. Prevailing Terms. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

15. Notices. Except as may be otherwise specifically provided herein, any approval, notice, direction, consent, request or other action by the Holder shall be in writing and may be communicated to the Borrower at the principal office of the Borrower set forth above, or at such other place or places as the Borrower shall designate to the Holder in writing, from time to time, for the receipt of communications from the Holder. The Holder shall provide a copy of any such notice to the tax credit limited partner of the Borrower at the address and subject to the conditions and limitations provided in the Regulatory Agreement.

16. Nature of Obligations. No person or entity shall be a mere accommodation maker, but each shall be primarily and directly liable hereunder.

17. Governing Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

18. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

19. Time. Time is of the essence in this Note.

20. No Waiver by the Agency. No waiver of any breach, default or failure of condition under the terms of this Note or the Loan Documents or the obligations secured thereby shall be implied from any failure of the Holder or the Agency to take, or any delay in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of this Note or the Loan Documents or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

21. Limitations on Recourse.

(a) While the Construction Loan is outstanding, the Holder shall have full recourse to the Borrower and general partner of the Borrower in addition to any real or personal property security for repayment of this Note.

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(b) Upon the Agency's written acknowledgment of satisfaction of all conditions in the Construction and Term Loan Agreement to conversion of the Construction Loan to one or more Permanent Loans or Bridge Loan (if applicable), including without limitation reduction of the outstanding principal balance to \$_____, the following limitations on recourse shall become effective: Neither the Borrower nor any partner of the Borrower shall have any direct or indirect personal liability for payment of the principal of, or interest on, this Note. The sole recourse of the Holder hereof with respect to the principal of, or interest on, this Note shall be to the property securing the indebtedness evidenced by this Note. No judgment, or execution thereon, entered in any action, legal or equitable, on this Note or the Deed of Trust securing this Note shall be enforced personally against the Borrower or, if the Borrower shall be a partnership, any partner of the Borrower, but shall be enforced only against the Development and such other or further security as, from time to time, may be hypothecated for this Note; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for this Note of all the rights and remedies of the Holder hereof, or (b) be deemed in any way to impair the right of the Holder hereof to assert the unpaid principal amount of this Note as a demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on this Note; nothing contained therein is intended to relieve the Borrower and, if Borrower is a partnership, any general partner of Borrower of liability for: (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the real property described in the Loan Documents that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges), except to the extent this provision would result in all or any portion of the indebtedness evidenced by this Note being treated as a recourse liability under Treasury Regulation 1.752-1(a)(1) and 1.752-2, as amended from time-to-time; (iii) the retention of any rental income or other income arising with respect to the Development collected by Borrower after the Holder hereof has given any notice that Borrower is in default to the full extent of the rental income or other income retained and collected by Borrower after the giving of any such notice; (iv) the fair market value as of the time of the giving of any notice referred to in subparagraph (iii) above of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Loan Documents after the giving of any notice referred to above; and (v) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development; and (vi) breach of any environmental covenant or representation made by the Borrower relating to the Development.

BORROWER

[borrower]

a California limited partnership

By: _____
a California nonprofit public benefit corporation,
its general partner

By: _____
Name: _____
Title: _____